IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 759 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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POKHRAJ GOTARAM SHRIRAM JAT - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MS FARHANA Y MANSURI for Appellant(s) : 1 - 2.
MS DS PANDIT, LD.APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 10/08/2007

ORAL JUDGMENT

1. The appellants-orig.convicts have preferred present appeal under Section 374 of the Code of Criminal Procedure, 1973, challenging the judgment and order of conviction and sentence dated 14th May 2004 passed by the learned Additional Sessions Judge and Joint District

Judge, Fast Track Court No.6, Bharuch, in Sessions Case No.67 of 2003. The appellant no.1-Pokhraj Jat was the orig.accused no.1 and appellant no.2-Sajjansinh Vijaysinh Bagari was the orig. accused no.4 before the trial Court. The orig.accused nos.1 to 5 (including the present appellants) were held guilty for the charge of offence punishable under Sections 342, 365 and 392 of the Indian Penal Code. However, the orig.accused no.6-Mukesh Dhiraj Shah was held guilty for the charge offence punishable under Section 411 of the Indian Penal Code. Of course, no exact information is available to the learned counsel appearing for the appellant but as per Ms.Farhana Mansuri, none of the appellants other than present appellants have challenged the judgment and order of conviction and sentence; and only these two appellants have challenged the judgment and order of conviction and sentence by way of present appeal.

2. According to Shri Mansuri, the finding of the

learned trial Judge is erroneous because the evidence as to the identity of both the appellants led by prosecution is full of infirmities and the witnesses examined to prove identification parade of the accused ought not to have been believed. The material witnesses i.e. about 14 witnesses, examined were treated hostile by the prosecution and, therefore, the prosecution has remained unsuccessful in bringing the crucial circumstantial evidence about their involvement in the crime in question. The police of District Bharuch had not arrested the accused persons but Ahmedabad Police had arrested them under some suspicion and thereafter, Bharuch Police appears to have implicated them in such a serious offence which was a crime undetected for Bharuch Police. It is the say of the prosecution that including the muddamal truck propety worth Rs.14,35,330/- were looted, that too on the highway and during night hours. So the offence was very grave and sensitive in nature and

Bharuch Police was anxious to detect the crime at the earliest. It is submitted that both the appellants have been victimised by Ahmedabad as well as Bharuch Police.

3. According to Ms.D.S.Pandit, learned Additional Public Prosecutor, the prosecution has remained successful in bringing home the charge and there is no material evidence whereby any error can be said to have been committed by the learned trial Judge while appreciating the evidence led during the course of trial. It is a fact that about four accused persons out of six have not challenged the legality and validity of the conviction and sentence, of course, such inaction on the part of the other four accused persons would not go against the present appellants and the Court shall have to appreciate the case of the prosecution qua the orig. accused nos.1 to 4 but there is ample evidence of involvement of both these appellants in the crime, otherwise there was no reason for the Executive

Magistrate to prepare a false panchnama of Test Identification Parade. In such or similar cases, the Police normally should try to arrange for Test Identification Parade and in the present case, it was arranged and both the appellants were identified by the witnesses who were called for the identification. None of the witnesses who were successful in identifying both the appellants had any animosity or previous grudge against them. The recovery of substantial part of muddamal at the instance of the accused persons involved in the offence is a relevant circumstance and keeping that fact in mind, the evidence of the Executive Magistrate, who arranged for Test Identification Parade, is required to be appreciated. If the panchas who were called by Executive Magistrate do not support the case of the prosecution, it was open for the learned trial Judge to rely upon the evidence of the Executive Magistrate who has stated that the witnesses who were called for Test Identification Parade had pointed out both

these appellants as persons accused of the crime. Plain reading of the panchnama creates an impression that no procedural error was committed in arranging the Test Identification Parade. The suggestions made to a witness examined, including the Executive Magistrate does not create a picture that the arrested persons were shown to the witnesses who have identified them prior to arrangement of Test Identification Parade. According to the case of the prosecution, about three accused persons were even absconding at the time when the trial was going on. The learned trial Judge has observed that non-recovery of a country made pistol i.e. Tamancha, cannot be said to be an infirmity in the investigation because it was replied by the Investigating Officer that it is possible to recover muddamal weapon used in committing the offence from the absconding accused persons.

4. According to Ms.D.S. Pandit, learned Additional Public Prosecutor, this Court of

course is entitled to assign detailed reasons and can record its own finding on evaluation of the evidence de novo. However, it is also open for the Court to say that the reasons assigned by the learned trial Judge are cogent and convincing reasons and the appeal, therefore, is required to be dismissed. The Court may not re-write the reasons assigned by the learned trial Judge.

5. Firstly the Court would like to state the case of the prosecution in brief which is reflected in the Charge Ex.5. According to prosecution, on 21st September 2001, the complainant-Parshuram Gandu Patil, resident of Bagilage, was proceeding towards Zanor Cross Roads as he was to reach to his destination i.e. Ahmedabad. He was driving the Motor Truck bearing Registration No.KA-22-A-5992 on the National Highway No.8, and he was going from Goa to Ahmedabad. On the next day, he had reached Nabipur after reaching Goa and at that time, it was about 12 mid night. After the

signboard of village Kargat and when the truck was proceeding towards Zanor Cross Roads at about 0-30 hrs., one another truck overtook the truck of the complainant. Suddenly the offending truck in question which had overtaken the vehicle of the complainant stopped and, therefore, the complainant was compelled to stop his vehicle as the offending vehicle was stopped in front of his vehicle. Thereafter, seven to eight persons came out of the said truck and started beating the complainant and his cleaner Parshuram Hanumant. Thereafter, the complainant and his cleaner were tied up with the rope. Thereafter, they were dragged and forcibly looted. The said truck which was loaded with 115 tyres of MRF company, was looted, and thereafter, the complainant was not aware as to what happened to his truck. They were kept in a tied up condition during that night hours and for the whole next day. But at about 09-00 p.m. on the next day both of them were thrown outside the truck in bushes. After some

struggle, the complainant was able to get out of the ties and he helped his cleaner in coming out of the said ties. One person had helped the complainant in getting out of his ties. Thereafter, the complainant reached to a hotel in the nearby area and at that spot the complainant found a police jeep car and he narrated the story to the persons who were there in the police jeep car about the offence committed. He has also taken the police to the spot where they were thrown by the accused persons.

6. This complainant PW-9-Parshuram Gandu Patil has been examined vide Ex.25. According to him, he was able to identify the persons who had beaten them and looted the truck and goods i.e. 115 tyres of MRF company loaded therein. He has also stated that he was called to identify the accused persons and had identified five persons in the office of the Collector. This witness has been cross-examined at length. The contradictions which

have been brought on record in paragrpah nos.6 and 7 during the cross-examination are very minor in nature and the witness has remained consistent and stood to the test of cross-examination. He has accepted that he does not know Gujarati language. He is not able to even read and write in Gujarati language and, therefore, he was not knowing actually what the police had written when he was narrating the details of the complaint. According to him, in such an odd fact situation, there is no material contradiction or improvement which can be said to be modulation in the basic story of the prosecution, which has come on record. The FIR Ex.26 can be used for the purpose of contradiction and corroboration, is the law and the FIR Ex.26 amply corroborates the version of the complainant and therefore, his version has been rightly believed by the learned trial Judge. It is not possible for this Court to say that the evidence of the complainant has been believed wrongly. When it is the evidence that the complainant has

identified both the appellants and both the appellants were among the five persons who were identified by the prosecution witnesses, it can be said that the complainant is getting corroboration from an independent panchnama drawn by the Executive Magistrate. In the same way, there is no material infirmity in the evidence of the Executive Magistrate Vasantbhai Jemalbhai Patel who has been examined vide Ex.31, who had drawn Test Identification parade panchnama. He has tendered all the relevant documents in evidence i.e. police yadi received by him, the exercise which the Executive Magistrate had undertaken to call the witnesses and the panch witnesses who had identified the accused persons. There is no conflict in the timings if these two documents i.e. Exs.33 and 34 are seen. Merely because the witnesses were taken by the police as well as the accused were also taken by the police, it is not possible to infer in absence of any cogent circumstance that the accused as well as the witnesses,

were taken together in the same vehicle to the office of the Executive Magistrate. On the contrary, Exs.33 and 34 clearly show that there was a time gap of 30 minutes in taking both these groups to the office of the Executive Magistrate. The rooms where both these groups were asked to sit are in different directions and during the course of cross-examination, the Executive Magistrate has said that it is not possible to visualize his chamber, if any person is sitting in his chamber. It is clear that this panchnama is transparent and well-proved panchnama of Test Identification parade. It is true that the cleaner has not been examined but it is not necessary for the prosecution to examine all witnesses to prove similar facts. The prosecution has proved that the complainant and his cleaner were beaten, by way of evidence of the complainant; and to corroborate this version of the complainant, the prosecution has produced medical certificate issued by the Government hospital

vide Exhs.47 and 48. The Court cannot ignore the number of injuries which were found on the body of both these witnesses. So the medical evidence also corroborates the complainant. The evidence as to looting of 115 tyres of MRF company has been proved by various documents i.e. vide Exhs.59 to 62. The evidence of Sarkhej Police Station diary Ex.58 rules out the possibility of false implication of accused persons in such a serious offence. The accused persons were arrested for the offence in question in couple of hours after registration of the FIR, and at the instance of the accused persons, the police was able to reach to the muddamal and the accused no.6-Mukesh Shah has been held guilty for the offence punishable under Section 411 of the Indian Penal Code. In respect of the same, the learned trial Judge has relied upon the evidence of the officer who has drawn the muddamal recovery panchnama from the premises of the said accused. For the sake of argument, if it is accepted that the accused had applied

bands on the eyes of the complainant and the cleaner, it is possible to infer that both the witnesses had enough scope to look to the faces of the accused persons in the period in between, and even at the time of scuffle when they were beaten up by the accused persons. When the persons who had come nearer to the complainant and his cleaner while applying bands to their eyes, they were able to see them also because those persons may be much closer to the complainant and his cleaner. True it is that the complainant had accepted that the eyes of complainant and his cleaner were closed by applying bands, but this by itself would not take this Court to a conclusion that the accused persons must have remained successful in applying the bands on the eyes of the complainant and his cleaner in couple of seconds. These two witnesses had an opportunity to look to the faces of the accused persons and only because of that scope they were able to identify five accused persons at the time of drawing Test

Identification Parade panchnama.

7. In view of aforesaid facts and circumstances of case, the Court is of the view that there is neither any infirmity nor material error in appreciating the evidence led by the prosecution. The learned trial Judge has recorded the finding of guilt on legal and admissible evidence. The evidence accepted by the learned trial Judge is a reliable evidence, where there is neither perversity nor illegality in the finding recorded by the learned trial Judge; and when there is no question of mistaken identity of any of these appellants, it is not possible for the Court to accept the pleas taken up by the appellants.

8. It submitted by Ms.Mansuri, learned counsel appearing for the appellant that because it was night time or it was dark and the accused were more in number, the say of the complainant ought not to have been accepted by

the learned trial Judge. When the complainant was dragged out of his truck from the driver's seat, he was beaten up by the accused persons and he was thereafter tied up and kept in the truck and then he had ample opportunity to look to the faces of the persons who were there. On the contrary, the Court can reasonably infer that at least for some time the lights of the truck of the complainant must have remained 'ON' and the truck driver who is on the higher padestal can see the person/s coming from the front side towards his truck after coming out from the offending truck or the truck parked in front of his truck. So the arguments of Ms.Mansuri are not found valid that the learned trial Judge ought to have held that the complainant or his cleaner must not have seen the faces of the accused persons and they may have committed error in identifying both the appellants at the time of drawing of Test Identification parade panchnama and again identified both of them in the Court when the complainant was

called for deposition.

9. So without entering into further discussion and by adopting the reasons assigned by the learned trial Judge, the Court is inclined to dismiss this appeal having no merit. I am told by learned counsel appearing for the appellants that at present the appellants are in Central Prison at Vadodara. The request to reduce the period of punishment is also not found acceptable. Merely because the appellants are in jail since long, it would not be either proper or justified to reduce the sentence since it is an offence of highway robbery. When very valuable parts and machinery as well as capital goods are being transported on each national highway, in cases where the prosecution is able to prove its case beyond reasonable doubt, the Court should impose severe punishment. In the present case, this Court is of the view that the rigorous imprisonment for seven years imposed by the learned trial Judge is adequate punishment and

cannot be said to be unreasonable or harsh punishment.

10. In view of aforesaid observations and discussion, the present appeal is hereby dismissed. The judgment and order of conviction and sentence dated 14th May 2004 passed by the learned Additional Sessions Judge and Joint District Judge, Fast Track Court N0.6, Bharuch, in Sessions Case No.67 of 2003, is hereby confirmed. The appellants are directed to serve the substantive sentence as imposed by the learned trial Judge.

(C.K. Buch, J)

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